IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8739 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARVIND BHATNAGAR

Versus

PHYSICAL RESEARCH LABPRATORY

Appearance:

1. Special Civil Application No. 8739 of 1992

MR MUKUL SINHA for Petitioner No. 1

MR SH SANJANWALA for Respondent No. 1

MR RS SANJANWALA for Respondent No. 2

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/12/2002

CAV JUDGEMENT

1. In this petition the petitioner seeks to challenge the decision of respondent no. 1 not to take

into account the previous services of the petitioner with the Solar Observatory for the purpose of granting pensionary benefits and he seeks appropriate relief on the ground that respondent no. 1's decision is high handed, arbitrary and violative of Article 14 of the Constitution of India.

2. The aforesaid controversy has arisen in the background of the following facts :-

2.1. The petitioner was originally employee of Vedhshala Trust which was a public trust registered under the Bombay Public Trusts Act and it was recognised by the Government of Gujarat as a research and cultural institution and it was also funded by the Government of Gujarat under the Grant-in-Aid scheme. The said trust, as it appears from the record of the petition, had set up different Solar Observatories for the purpose of studying and carrying out the research work in astronomy. The petitioner was first appointed as Director of the Ambaji Solar Observatory by the trust and he was placed in the scale of Rs.1100-50-1200-60-1500. The letter of offer is dated 4th May, 1972. The petitioner accepted the said offer and the appointment and joined the duty with effect from 2nd August, 1972. While working at Ambaji Solar Observatory the petitioner was entrusted with an assignment of building a high quality solar optical telescope for research purpose and the petitioner on making survey for suitable sites for the said purpose fell his choice on an island situated in Fatehsagar lake in the city of Udaipur. Thus, with this purpose Observatory at Udaipur was also established and it had commenced its functioning some time in the year 1975. The petitioner was duly appointed as Director of Udaipur Solar Observatory.

2.2. Within short time the importance of Udaipur Solar Observatory became known in the field of astronomy and, according to the petitioner, for the better management of such an important observatory the trustees of Vedhshala Trust contemplated to place it in the hands of the Government and with that view a proposal to the Central Government was made to take over this observatory and to entrust it to respondent no. 1 to carry out the research work in a better way and with utmost efficiency. The proposal found favour with the Central Government and the decision to hand over the Udaipur Solar Observatory to respondent no. 1 was taken by the Director General of Vedhshala Trust and it was

duly forwarded to respondent no. 1 vide letter dated 3rd March, 1981. The proposal ultimately resulted into respondent no. 1 taking over the said observatory and placing the same under its direct administrative control. For running the administration and carrying out the research work, etc. by the Udaipur Solar Observatory respondent no. 1 was allotted a special grant by the Central Government. The decision of the Government to take over the Observatory was also communicated to respondent no. 1 vide its letter dated 3rd December, 1981. The event of taking it over by respondent no. 1 took place shortly thereafter.

2.3. It is the say of the petitioner that at the time of taking over, two Scientific Personnel of Udaipur Solar Observatory were transferred and placed under the administrative control of respondent no. 1, the petitioner being one of them. At the time of transfer the petitioner was placed in the basic of Rs.2,125/- by way of interim arrangement and subsequently his grade was fixed at Rs.2,000-125/2-2500 vide office order dated 13th February, 1984.

2.4. It is the say of petitioner that in the year 1990 respondent no. 1 gave an option to its employees who were in the C.P.F. scheme to switch over to the G.P.F. scheme with pension and the petitioner alongwith the other employees of respondent no. 1 was also given choice to exercise the option and the petitioner like other employees of respondent no. 1 exercised the option in favour of G.P.F.-cum-pension scheme, which was duly accepted by respondent no. 1 and the petitioner was admitted to the G.P.F. cum pension scheme vide office order dated 15th January 1991. However, while accepting the option exercised by the petitioner respondent no. 1 intimated the petitioner that for the purpose of determining the pensionary benefits his service with respondent no. 1 would alone be taken into consideration and not the service which he had rendered with the Vedhshala Trust. The resultant effect of such decision rendered the service of the petitioner with the trust since August 1972 upto December 1981 totally wiped off for the purpose of determining the pensionary benefits to the petitioner. The petitioner, for impressing upon respondent no. 1 and the Central Government not to ignore his previous service for pensionary benefits, entered into correspondence with them but the same did not assume any fruitful result. The stand taken by respondent no. 1 is that it did not

have any independent rules regarding the counting of past service for the purpose of pension and had adopted the rules framed by the Central Government, Department of Personnel & Administrative Reforms, Pension Unit, dtd. 12th September, 1984 and O.M. No. 28/10/84-Pension Unit dated 12th September, 1985, for the same. The say of respondent no. 1 is that it had published Establishment Procedure Order whereby these provisions framed by the Central Government for counting of past service were adopted. The said order is dated 21st July, 1987. The say of respondent no. 1 is that the provisions adopted by it do not permit it to take the service of petitioner which he had rendered with the Trust from August 1972 to December 1981 into consideration because Vedhshala Trust was purely a private body and it was neither a Central Government nor a Central Autonomous body. According to respondent no. 1 the provisions permit taking into consideration, while determining the question regarding pension, only if the concerned person had put in his previous service in an institution which was either held by Central Government or it was Central Autonomous body. According to the rules Central Autonomous body would mean any autonomous body which is substantially funded from the cess or Central Government grants. Thus, according to respondent no. 1, since the petitioner did not fall in this category, his previous service could not be counted for the purpose of calculating the pensionary benefits.

2.5. Since all the efforts made by the petitioner to convince the concerned authorities have failed, he has now approached this Court under Article 226 of the Constitution of India.

3. Mr. Mukul Sinha, the learned counsel for the petitioner has submitted before me that the petitioner is a well known personality in the field of astronomy in the country and he has rendered his enormous contribution in the field of astronomical research. He has further submitted that the Udaipur Solar Observatory set up by the present petitioner has become internationally famous and it renders invaluable services to the Scientists to carry out the research work in the field of astronomy. He has also submitted that the decision of respondent no. 1 is absolutely high handed, arbitrary and it has no logical/justifiable reason to take such decision. He has also submitted that at the time when the Udaipur Solar Observatory was taken over by the respondent no. 1 there was no such rule and the

present rule was adopted by respondent no. 1 only in the year 1987, hence the petitioner ought to have been treated on par with other employees of the respondent no. 1 for the purpose of determining the pensionable benefits. He has also submitted that Vedhshala Trust was not a private trust but it had received the recognition from the Government of Gujarat and it had also regularly received grant from the Government for carrying out the research in astronomy. In other words, according to Mr. Sinha, the Vedhshala Trust was an institute which could be equated with any Central Autonomous body with the only difference that the funds it received were from the State Government. Lastly he has submitted that a person of such a high status and reputation and who has rendered such yeoman services to the Nation should not be left in the lurch after his retirement for receiving the pensionary benefits.

4. As against that, Mr. S.S. Sanjanwala, the learned counsel for respondent no. 1 has submitted that the petitioner's case is totally misfounded and the present petition is not at all maintainable. He has submitted that the grievance of the petitioner was considered at all levels, but since it was found that he was not covered under the rules, respondent decided not to take into account the service rendered by him with the Vedhshala Trust. According to Mr. Sanjanwala, respondent no. 1 had adopted the rules for pension as framed by the Central Government. As per the provisions of the said rules, in case of such situation only the service rendered by such employee to the Central Government or Central Autonomous Body would be taken into consideration for the purpose of deciding the pensionary benefits. However, in the case of petitioner, he had rendered service to Vedhshala Trust which was neither owned or administered by the Central Government nor it was Central Autonomous Body and hence it could not be taken into account. He has lastly submitted that respondent no. 1 has nothing personally against the petitioner but since the rules do not permit it to take into account the service rendered by the petitioner with Vedhshala Trust it has to ignore the service of the petitioner from August 1972 to December 1981.

5. Having carefully seen the record of this petitin it clearly appears that the petitioner joined service of the trust as Director in the month of August 1972. The Trust carries out the research work in astronomy by setting up different Observatories at various places and it was the petitioner who was

entrusted with the important task of building up high quality solar optical telescope for the research purpose and the entire credit for setting up of Udaipur Solar Observatory goes to the petitioner. The record of the petition shows that the trust was also being financed or funded by the Government of Gujarat to carry out various research works. It was only for the purpose of better and efficient administration it decided to request the Central Government to take up the administration of Udaipur Solar Observatory and the request ultimately turned into reality and, therefore, respondent no. 1 became the employer of petitioner. Thus, the petitioner rendered services right from August 1972 to December 1981 i.e. more than 9 years. If such service is to be ignored, it is bound to result into causing heavy adverse effect on pensionary benefits that may be available to the petitioner. It may be noted here that at the time the taking over took place, no such rules were in existence. For the first time it came into force in the year 1987. In other words, the petitioner had put in more than 6 years' service with respondent no. 1 by then.

5.1. Now with a view to appreciate the revial contentions, it would be necessary to reproduce the text of Establishment Procedure Order of respondent no. 1 dated July 21, 1987, since it forms the basis of the entire controvesry. It is :-

"Sub : Counting of past service rendered in Central Government or Central Autonomous body for the purpose of pension in PRL.

The Council of Management of PRL in its 44th meeting held on March 31, 1987 has approved the adoption of the orders about counting of past service rendered by PRL staff members under the Central Government or Central Autonomous bodies before joining PRL for the purpose of pension as per the provisions contained in Govt. of India, Department of Personnel & Administrative Reforms, O.M. No. 28/10/84 Pension Unit, dated August 29, 1984 and O.M. No. 28/10/84-Pension Unit, Volume-I, dated September 12, 1985 is in force from time to time. These provisions are briefly explained below :

(i) "Central Autonomous Body" means a body which is financed wholly or substantially from cess or Central Government grants. It includes a central statutory body or a

central university but does not include a public undertaking.

(ii) Only such service which qualifies for pension under the relevant rules of the Central Government or Autonomous body shall be taken into account for this purpose.

(iii) The employees of Central Government or Central Autonomous body, as the case may be, who have already received pro-rata retirement benefits or other terminal benefits for their past service will have the option either

(a) to retain such benefits, and in that event their past service will not qualify for pension under PRL or

(b) to have the past service counted as qualifying service for pension under PRL as permissible in which case the pro-rata retirement or other terminal benefits already received by them will have to be deposited alongwith interest thereon from the date of receipt of those benefits till the date of deposit with PRL. The right to count previous service as qualifying service shall not revive until the whole amount has been refunded.

The above option shall be exercised latest by September 30, 1987 failing which such staff members will be deemed to have opted for retention of the benefits already received by them. The option once exercised shall be final.

(iv) These orders will be applicable only in those cases where joining of the staff member from one organisation to another was with the consent of the organisation under which he was serving earlier including cases where the individual had secured employment directly on his own volition provided he had applied through proper channel or with prior permission of the administrative authority concerned.

2. These orders will take effect from the date of issue and will be applicable only to

those staff members who have opted for pensionary benefits in PRL and retire on or after the issue of these orders."

This provision has been banked upon by respondent no. 1 for not counting the service of the petitioner with Vedhshala Trust. Obviously this is resulting into substantial financial loss to him. It is, therefore, required to be decided whether such decision of respondent no. 1 is just and proper or otherwise.

5.2. It is very often said by the Apex Court that grant of pension is not a bounty but it is a right or an adequate compensation received by a person for the service which he has already rendered. The question therefore would be whether it is just and proper for any employer to hamper this right to any extent? Normally the answer would be in the negative. It is, therefore, required to be seen whether there is any justification for respondent no.1 to curtail, in any manner, this valuable right of the petitioner. Ofcourse, the respondent no.1 justifies its decision by relying on aforesaid provision. This issue is, therefore, required to be examined from different angles.

5.3. Assuming that these rules had already come into force at the time of petitioner joining respondent no. 1, would he have joined respondent no. 1? The answer would be, in all probabilities, no. If the substantial part of his service was to be cut off by respondent no. 1 for aforesaid purpose and if the petitioner had known this at the time of his joining respondent no. 1, in all probabilities, he would not have opted for the same. Ofcourse, it is argued on behalf of respondent no. 1 that at the time when the merger took place, there was no scheme of pension in existence and it was only the C.P.F. which was available and the petitioner had already received benefit under that. However, such argument cannot be of much help to respondents because it hardly matters whether at the time when such merger took place benefit regarding grant of pension was there or not. If this benefit is later on granted to the employees of respondent no. 1, its benefits should be made available to the petitioner also, who for all purposes had become the employee of respondent no. 1. The petitioner was brought on the establishment of respondent no. 1 in 1981, when there was no provision regarding pension. The scheme and the relevant rules came into existence only in the year 1987. By then the petitioner had been with respondent no. 1 for almost 6 years and he had become part and parcel of

the institution. Therefore, petitioner cannot be denied complete benefit of the pensionary dues. One can understand if provision regarding not considering the previous service is applied in the cases of persons who have left other organisations and joined respondent no. 1 after the adoption of rules of the Central Government i.e. 21st July, 1987 the date on which Establishment Procedure Order was published. It is very strange that on one hand respondent no. 1 permits petitioner to have option in respect of pension scheme while on the other hand it denies him to have proper benefit thereof.

5.4. It may also be noted here that such provision will create discrimination amongst those employees of respondent no. 1 who initially served elsewhere and the employees who served the Central Government or any Central Government Autonomous Body, but later on joined the service of respondent no. 1 by virtue of any process or otherwise prior to adoption of Central rules by respondent no. 1 and such provision of the Rules will have the effect of violating Article 14 of the Constitution of India. It is true that in the petition there is no specific or direct challenge to the concerned rule on the ground of it being violative of Article 14, but the Court can certainly ascertain its effect and prohibit such rule's retrospective applicability if it is found to be so.

5.5. The petitioner, who has rendered invaluable services to the country in the field of astronomy has been placed in such a situation by the respondents that he has to approach this Court under Article 226 of the Constitution of India in the year 1992 to obtain a direction on respondent no. 1 to take into account the service rendered by him with his original employer, namely the Vedhshala Trust from August 1972 to December 1981. It is a matter of pity that such eminent personality has to knock the doors of this Court for such purpose. The stand taken by respondents in this matter is not at all in consonance with the equities that may weigh in favour of the petitioner and to say the least though it may be in accordance with the rules which were adopted at much later point of time, it has put the petitioner in a very embarrassing position.

6. Since the petitioner in this petition has not challenged the rules, I am not entering into the question of deciding the validity of such rules. However, considering the case in the light of principles of equity and justice, I find that grave injustice has been done to the petitioner by respondent no. 1 and he

is required to be redressed for this injustice. In the result, this petition is allowed. The respondent no. 1 is directed to take into consideration the previous services of the petitioner rendered with Solar Observatory for the purpose of granting pensionary benefits. Respondent no. 1 is further directed to compute the amount of pension payable to the petitioner on such basis and commence the regular payment thereof. The petitioner will be entitled to receive this amount from the date of his retirement and hence if there are arrears, the same may be cleared by respondent no. 1. Respondent no. 1 is directed to comply with these directions on or before 15th March, 2003. It is also made clear that whatever the benefits the petitioner has received under C.P.F., if necessary under the rules, will have to be refunded to respondent no. 1. The petition is, therefore, allowed. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.